

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

12/21/10

-----X
FRITZNER CHARLES,

Plaintiff,

THIRD-PARTY SUMMONS

Index No. 20734/10

-against-

DEWALT INDUSTRIAL TOOL CORP.,
THOMAS GAYLE, MERVAL PAISLEY,
MERVA PAISLEY-GAYLE and BLACK & DECKER,

Defendants.
-----X

DEWALT INDUSTRIAL TOOL CORP., and
BLACK & DECKER,

Third-Party Plaintiff,

-against-

THOMAS GAYLE, MERVAL PAISLEY,
AND MERV PAISLEY-GAYLE,

Third-Party Defendants.
-----X

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

You are hereby summoned to answer the complaint of the third-party plaintiff Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Corp. and Black & Decker and the complaint of the original plaintiff, copies of which together with copies of all prior pleadings in this action are herewith served upon you and to serve copies of your answer upon the third-party plaintiff's attorney at its address stated below, and upon the attorney for the original plaintiff at:

Jeffrey H. Schwartz, Esq.
160 Broadway, Suite 502
New York, NY 10038.

If this third-party summons was personally served upon you in the State of New York, the answer must be served within twenty (20) days after such service, excluding the date of service. If the third-party summons was not personally delivered to you within the State of New York, the answer must be served within thirty (30) days after service of the summons is complete as provided by law.

If you do not serve an answer to the attached third-party complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the third-party complaint.

Dated: New York, New York
December 21, 2010

Yours, etc.,
SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.
Attorneys for Defendants
Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool
Corp. and Black & Decker
111 John Street, 20th Floor
New York, New York 10038-3198
(212) 964-7400
Our File No. BD-00110/MKB

*Third-Party Defendant's
Address For Service :*

Thomas Gayle
902 Albany Avenue
Brooklyn, NY 11203

Via Process Server

Merval Paisley
902 Albany Avenue
Brooklyn, NY 11203

Via Process Server

Merva Paisley-Gayle
902 Albany Avenue
Brooklyn, NY 11203

Via Process Server

12/22/10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
FRITZNER CHARLES,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CORP.,
THOMAS GAYLE, MERVAL PAISLEY,
MERVA PAISLEY-GAYLE and BLACK & DECKER,

Defendants.
-----X

DEWALT INDUSTRIAL TOOL CORP., and
BLACK & DECKER

Third-Party Plaintiff,

-against-

THOMAS GAYLE, MERVAL PAISLEY,
and MERVA PAISLEY-GAYLE,

Third-Party Defendants.
-----X

PLEASE TAKE NOTICE, that in the above-entitled action the defendant/third-party plaintiff Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Corp. and Black & Decker has impleaded the above-named third-party defendants.

The caption shall now read as above.

This action is not on the trial calendar.

**NOTICE PURSUANT
TO CPLR 3402(b)**

Index No. 20734/10
IAS Part

This action bears index number 20734/10 and has been assigned to Individual Assignment Part, A copy of this statement has been served upon all attorneys who have appeared in this action.

Dated: New York, New York
December 21, 2010

Yours, etc.,

SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.
Attorneys for Defendants
Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool
Corp. and Black & Decker
111 John Street, 20th Floor
New York, New York 10038-3198
(212) 964-7400
Our File No. BD-00110/MKB

TO:
JEFFREY H. SCHWARTZ, ESQ.
Attorney for Plaintiff
Fritzner Charles
160 Broadway, Suite 502
New York, NY 10038
(212) 964-2160

Thomas Gayle
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

Merval Paisley
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

Merva Paisley-Gayle
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
FRITZNER CHARLES,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CORP.,
THOMAS GAYLE, MERVAL PAISLEY,
MERVA PAISLEY-GAYLE and BLACK & DECKER,

Defendants.
-----X

DEWALT INDUSTRIAL TOOL CORP., and
BLACK & DECKER,

Third-Party Plaintiff,

-against-

THOMAS GAYLE, MERVAL PAISLEY,
AND MERV PAISLEY-GAYLE,

Third-Party Defendants.
-----X

Third-party plaintiff Black & Decker (U.S.) Inc. s/h/a Dewalt Industrial Tool Corp. and Black & Decker, by its attorneys, Smith Mazure Director Wilkins Young & Yagerman, P.C., complaining of third-party defendant, respectfully alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, third-party plaintiff Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Corp. and Black & Decker was and is a foreign corporation duly authorized to transact business in the State of New York.

2. At all times hereinafter mentioned, third-party plaintiff Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Corp. and Black & Decker was and is a business entity doing business in New York.

3. At all times hereinafter mentioned, third-party defendants were and are individuals residing in the State of New York.

4. This action arises out of transactions or occurrences in the State of New York.

5. Prior hereto, plaintiff commenced an action in this court. Annexed hereto and made a part hereof are copies of all pleadings heretofore served in said action.

6. It is alleged in the complaint of plaintiff, without admitting the truth thereof, that on May 12, 2009, plaintiff suffered personal injuries and damages and the injuries sustained are attributed to the negligence of third-party plaintiff.

7. If damages were sustained as alleged in the complaint, it was due to the negligence and carelessness of the third-party defendant and/or third-party defendants' agents, servants and/or employees.

8. If a judgment or settlement is recovered by plaintiff from the third-party plaintiff, such recovery will have come about because of the negligence, carelessness, and recklessness of the third-party defendants.

9. By reason of the foregoing, the third-party defendants are liable over to the third-party plaintiff in common-law indemnification or contribution for all or third-party defendants proportionate share of any judgment or settlement that the plaintiff may recover from the third-party plaintiff.

AS AND FOR A SECOND CAUSE OF ACTION

10. The third-party plaintiff repeats, reiterates, and realleges each and every allegation set forth in the paragraphs numbered "1" through "9", inclusive, with the same force and effect as if set forth herein at length.

11. Third-party defendants and/or third-party defendants' agents, servants, and/or employees are solely, primarily, and actively negligent.

12. If the injuries and damages were sustained by plaintiff as alleged in the complaint through any negligence other than the negligence of plaintiff, it was due to the sole, primary, and active negligence of the third-party defendants and/or third-party defendants' agents, servants, and/or employees.

13. If a judgment or settlement is recovered by plaintiff from the third-party plaintiff, it will have come about because of the sole, primary, and active negligence of the third-party defendants and/or third-party defendants' agents, servants, and/or employees in the breach of third-party defendant's obligations pursuant to contracts and agreements entered into between the third-party plaintiff and third-party defendants.

14. If a judgment or settlement is recovered by plaintiff from the third-party plaintiff, said third-party plaintiff will be entitled to judgment over and against said third-party defendants for all of said judgment.

WHEREFORE, third-party plaintiff demands judgment over and against the third-party defendants for all of third-party defendants' proportionate share of any judgment which may be recovered by plaintiff against third-party plaintiff or, in the event that judgment is not rendered

pursuant to the first and second causes of action. together with the costs, disbursements, counsel fees and accrued interests thereon.

Dated: New York, New York
December 21, 2010

Yours, etc.,

SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.
Attorneys for Defendants
Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool
Corp. and Black & Decker
111 John Street, 20th Floor
New York, New York 10038-3198
(212) 964-7400
Our File No. BD-00110/MKB

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VERIFICATION

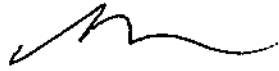
MICHAEL K. BERMAN, an attorney duly admitted to practice law in the State of New York, hereby affirms the truth of the following under penalty of perjury and pursuant to CPLR 2106:

I am a member of of Smith Mazure Director Wilkins Young & Yagerman, P.C., and I have read the contents of the foregoing and it is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters I believe them to be true.

() I make this verification because defendants, BLACK & DECKER (U.S.) INC. s/h/a DEWALT INDUSTRIAL TOOL CORP. AND BLACK & DECKER, resides outside of the county where Smith Mazure Director Wilkins Young & Yagerman, P.C. maintains its office.

✓ I make this verification because defendants, BLACK & DECKER (U.S.) INC. s/h/a DEWALT INDUSTRIAL TOOL CORP. AND BLACK & DECKER, is a corporation and Smith Mazure Director Wilkins Young & Yagerman, P.C., is its attorney in this action and my knowledge is based upon all facts and corporation records available and in my possession.

Dated: New York, New York
December 21, 2010



MICHAEL K. BERMAN

STATE OF NEW YORK, COUNTY OF NEW YORK s.s.:

AFFIDAVIT OF SERVICE BY MAIL

NIBIA M. ORTIZ, being duly sworn, deposes and says that deponent is employed by Smith Mazure Director Wilkins Young & Yagerman, P.C., the attorney for defendants Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Corp. and Black & Decker, is over the age of eighteen, is not a party to this action, and resides at Bronx, New York 10472.

On December 22, 2010, deponent served the within Notice Pursuant to CPLR 3402(b), Third-Party Summons, and Verified Third-Party Complaint upon:

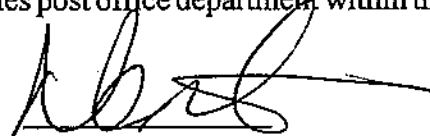
JEFFREY H. SCHWARTZ, ESQ.
160 Broadway, Suite 502
New York, NY 10038
(212) 964-2160
Attorney for Plaintiff
Fritzner Charles

Thomas Gayle
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

Merval Paisley
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

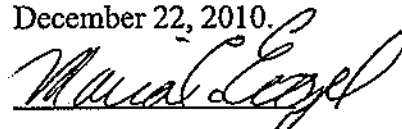
Merva Paisley-Gayle
902 Albany Avenue
Brooklyn, NY 11203
Via Process Server

the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in - a post office - official depository under the exclusive care and custody of the United States post office department within the State of New York.



NIBIA M. ORTIZ

Sworn to before me
December 22, 2010.



MARIA C. ENGEL
Notary Public, State of New York
No. 01EN5089958
Qualified in Kings County
Commission Expires Dec. 9, 2018

2018

INDEX NO. 20734/10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

FRITZNER CHARLES,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CORP.,
THOMAS GAYLE, MERVAL PAISLEY,
MERVA PAISLEY-GAYLE and BLACK & DECKER,

Defendants.

-----X
and a third-party action.

NOTICE TO CPLR 3402(b),
THIRD-PARTY SUMMONS, and
VERIFIED THIRD-PARTY COMPLAINT

SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.
Attorneys for Defendants
Black & Decker (U.S.) Inc. s/h/a DeWalt
Industrial Tool Corp. and Black & Decker
111 John Street, 20th Floor
New York, New York 10038-3198
(212) 964-7400
BD-00110/MKB

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. §130-1.1a

MICHAEL K. BERMAN hereby certifies that, pursuant to 22 N.Y.C.R.R. §130-1.1a, the foregoing Notice Pursuant to CPLR 3402(b), Third-Party Summons, and Verified Third-Party Complaint are not frivolous nor frivolously presented.

Dated: New York, New York
December 21, 2010


MICHAEL K. BERMAN

PLEASE TAKE NOTICE

- ☐ that the within is a true copy of a _____ entered in the office of the clerk of the within named Court on _____.
- ☐ that a _____ of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court at _____, on at 9:30 a.m.

SMITH MAZURE DIRECTOR WILKINS YOUNG &
YAGERMAN, P.C.
Attorneys for Defendants
Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool
Corp. and Black & Decker
111 John Street, 20th Floor
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